



STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Stormwater Compensation Fee Utilization Plan Guidance For Projects in Watersheds of Lakes Pursuant to DEP Rule Chapter 500

Introduction

The Stormwater Management Law (38 M.R.S.A. §420-D.11.) authorizes the Department to accept a compensation fee in lieu of some of the phosphorus reduction necessary from a project to meet its phosphorus allocation for projects located in lake watersheds. It also authorizes the Department to establish a non-lapsing Compensation Fund to receive these fees. The fund is dedicated to the payment of the cost and related expenses of compensation projects. Compensation projects are projects that provide long term elimination or reduction of chronic phosphorus sources located within the same lake watershed as the project with respect to which the compensation fee is paid.

How does the compensation fee work?

For most projects in lake watersheds, this option is only available to the applicant if phosphorus control measures have been incorporated in the project design that provide at least a 50% reduction in projected phosphorus export in stormwater runoff from the project site. Provided the project design meets this criterion, the applicant can address the remainder of the phosphorus reduction necessary to meet the site's phosphorus allocation by paying a compensation fee to the department. As authorized in the statute, the commissioner has set this rate at \$10,000 per pound of annual algal-available phosphorus export. (Note: the 50% requirement may be waived if a project is located within an urbanized part of a designated growth area.)

The following example illustrates how the compensation fee might be applied to a typical project. Assume there is a small strip mall proposed on a 5 acre parcel of land located in the watershed of a lake *most at risk from development*. The per acre phosphorus allocation for this lake's watershed is 0.04 pounds P/yr/acre. The annual phosphorus export allocated to this parcel would therefore be 5 acres X 0.04 lbP/yr/acre, or 0.20 lbP/yr. Analysis of projected pre-treatment algal-available phosphorus export from the proposed strip mall, (based on 2.0 acres of parking and roads/driveways, 0.5 acres of buildings and 1.0 acres of lawn) is 4.5 lbP/yr. In order for the applicant to meet the parcel's phosphorus allocation, phosphorus control measures would have to be installed that would reduce the projected phosphorus export from the site from 4.5 lbP/yr down to 0.20 lbP/yr, a 95% reduction. This would probably be technically infeasible or, if technically feasible, extremely expensive. Instead, the applicant opts to install two dry swales on the site to treat the stormwater runoff from the parking areas, drain the roof runoff to a wooded buffer behind the mall, and to pay a compensation fee.

The treatment provided by the buffer and dry swales reduces the projected phosphorus export to 1.90 lbP/yr, a 58% reduction. Since control measures have been incorporated that reduce export by more than 50%, the project is eligible for a compensation fee. The remaining phosphorus export after treatment is 1.90 lbP/yr, which is 1.70 lbP/yr greater than the parcel's allocation of 0.20 lbP/yr. The required compensation fee is therefore $1.7 \times \$10,000$, or \$17,000.

Are compensation fees an option in any lake watershed?

No. The statute states that “the department *may* allow an applicant ... to address certain on-site phosphorus reduction requirements through payment of a compensation fee” There are some lake watersheds where the compensation fee option is not appropriate either because there is little or no opportunity for mitigation of existing phosphorus sources in the watershed or because no local entity with the interest and/or the ability to implement a compensation project has been identified. The department will generally not allow use of the compensation fee in the following cases:

- The watershed is largely undeveloped, and therefore lacks opportunity for mitigation of existing phosphorus sources. Note: This situation is most likely for small lakes with small watersheds that are on the most at risk list because they are located in a high growth area, but the growth has not yet reached the lake's watershed.
- There has already been a substantial amount of phosphorus mitigation activity in the watershed and the few remaining opportunities for mitigation would be comparably more difficult or expensive to implement than on-site treatment.
- No organization in the area with the interest, commitment and/or ability to implement mitigation measures has been identified.

The department maintains a list of watersheds of lakes most at risk from development that fit one or more of the preceding cases. In these watersheds the compensation fee option will not be allowed unless a compensation fee utilization plan has been developed and approved by the department for the watershed that specifically identifies measures that will be taken to mitigate phosphorus sources and the parties responsible for taking them. For projects that are required to meet a phosphorus allocation in other lake watersheds, the department will make a determination of whether or not the conditions above are met on a case by case basis.

What is the Department's process for distributing funds to support compensation projects?

On at least an annual basis, the department will post notice of available funds for compensation projects. The department will send the notice to municipalities and watershed organizations that are located in the watersheds for which compensation fees

have been paid in. The department will also post notice of available funds on its web site.

Who is eligible to apply for compensation funds to support a compensation project?

The stormwater statute limits who may set up a fund to directly receive compensation fees to public, quasi-public and private, non-profit organizations. There are no restrictions on who may apply to utilize compensation fee money from DEP's account.

What kinds of activities are appropriate as compensation projects?

Compensation funds may be used to support a variety of activities. The list of compensation projects below is presented in order of general preference by the department, based on the following principles:

- The more permanent the fix, the more preferred the action.
- Actions that provide for treatment of runoff (e.g., diversion into a buffer) are preferred over those that solely address an erosion problem; projects that do both are fine.
- An existing source should be eliminated or reduced. Conservation (protection) of currently undeveloped land does not eliminate or reduce an existing source.

Compensation Projects (in order of preference, from highest to lowest)

- Elimination of an exporting land use and conversion to forest or meadow, preferably with long term protection. Examples:
 - elimination of an eroding forest harvesting road by reshaping and re-vegetating with forest cover
 - elimination of a high export pasture, replanted to forest
- Measures that provide low maintenance, passive treatment of existing, high export stormwater phosphorus sources. Examples:
 - Diversion of ditched road runoff via frequent ditch turnouts into protected, natural buffer areas. This could be done in conjunction with ditch stabilization and road rehabilitation.
 - Redistribution of channelized runoff from existing concentrated developed areas into natural buffer/filter areas. This should include a long term maintenance plan for the distribution system.
- Installation of BMPs to correct existing erosion or other phosphorus sources, complete with a long term maintenance plan. Examples:
 - Repair of eroding road ditch or washed out camp road
 - Retrofit of stormwater treatment BMPs such as bioretention cells in an existing high use parking area
- Establishment of a watershed program for long term implementation and/or maintenance of phosphorus mitigation measures. Example:

- Purchase of a regenerative air street sweeper for a town to regularly clean the street network in a high source urban runoff area

What information must be included in an application for compensation project funding?

An application for compensation project funding must include a proposed work plan which shows how compensation funds will be spent, including a timeline, and must include provisions for a final report documenting what was done. In most cases, funds should be spent within 1 year of the grant award.